SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA DIVISION

TENTATIVE RULINGS

EVENT DATE: 12/01/2015 EVENT TIME: 08:20:00 AM DEPT.: 43
JUDICIAL OFFICER: Kevin DeNoce

CASE NUM: 56-2014-00453806-CU-PA-VTA
CASE TITLE: LINDSAY VS. CHRISTIAN

CASE CATEGORY: Civil - Unlimited CASE TYPE: PI/PD/WD - Auto

EVENT TYPE: Motion to Compel - Motion to Compel Further Supplemental Responses to Request for Admission Set One
CAUSAL DOCUMENT/DATE FILED: Motion to Compel, 10/28/2015

With respect to the below scheduled tentative ruling, no notice of intent to appear is required. If you wish to submit on the tentative decision, you may submit a telefax to Judge DeNoce's secretary, Hellmi McIntyre at 805-662-6712, stating that you submit on the tentative. Do not call in lieu of sending a telefax, nor should you call to see if your telefax has been received. If you submit on the tentative without appearing and the opposing party appears, the hearing will be conducted in your absence. This case has been assigned to Judge DeNoce for all purposes.

Absent waiver of notice and in the event an order is not signed at the hearing, the prevailing party shall prepare a proposed order and comply with CRC 3.1312 subdivisions (a), (b), (d) and (e). The signed order shall be served on all parties and a proof of service filed with the court. A "notice of ruling" in lieu of this procedure is not authorized.

The court's tentative ruling is as follows:
Plaintiff's motion to compel further responses to RFAs is granted as to RFA 15. The court previously sustained Christian's discovery objections to the extent they were based on 5th Amendment grounds and extended that protection to RFA 15 on 4/2/15. The stay was lifted in June, 2015, and Christian served supplemental responses on 8/7/15. He provided a further response to RFAs 1, 2, 16-18; he did not provide a further response to RFA 15. Christian must provide a further response to RFA 15 but no sanctions will be imposed as a result of his failure to do so in light of the confusion regarding this issue.

Deny the remainder of the motion. While the court overrules Christian's objections to RFAs 1 and 16-18. However, given the nature of the RFAs and the fact that they go to ultimate issues in the case, the court declines to compel him to admit them. If his failure to admit was not in good faith or he failed to conduct a reasonable investigation, plaintiff's remedy is to seek an award of post-trial costs pursuant to CCP § 2033.420. No sanctions are awarded against plaintiff for bringing this motion since Plaintiff was right to challenge Christian's objections despite the fact that the court is not ordering further responses with respect to RFAs 1, 16, 17, and 18.

Discussion:
Plaintiff was previously admonished on 4/2/15 to comply with Rule 3.1110(f) which requires exhibits to be hard-tabbed. However, Plaintiff has again submitted declarations from David Weisberg containing 12 exhibits without hard tabs. Defendant also submits a declaration with 12 exhibits and no hard tabs.

Here is the history of this discovery dispute as taken from the court's file: Plaintiff filed her complaint in June, 2014. On November 14, 2014, plaintiff filed various motions to compel further responses to discovery and defendants moved to stay discovery due to the then-pending criminal proceeding against Drew Christian arising out of the subject accident (hit and run, not DUI). Plaintiff's 11/14/14 motion to compel further responses to RFAs covered RFAs 1, 2, 5, 6, 8, 9, 11-13

and 16-18.

On 12/16/14, the court granted the motion for protective order/stay with regard to discovery to date to which Christian had asserted the Fifth Amendment and as to any further additional discovery. The court specified these to be RFAs 2, 16, 17 and 18. This ruling was confirmed in the minute order regarding the motion to compel further responses to RFAs. (See 12/16/14 minute orders). However, at that time Christian had also asserted the 5th Amendment in response to RFA 15; plaintiff did not bring this to the court's attention and RFA 15 was not included in the 11/14/14 motion to compel further response. The court ordered further responses to all other RFAs that were the subject of plaintiff's motion (RFAs 1, 5, 6, 8, 9, 11-13).

On February 20, 2015, plaintiff filed a motion to deem RFAs admitted. This motion concerned Christian's supplemental responses served pursuant to the court's 12/16/14 order. In his supplemental responses, Christian asserted his 5th Amendment privilege to RFA 1. With regard to this, the court overruled all objections aside from the 5th Amendment privilege and made RFA 1 subject to the existing protective order in this regard. (See 3/27/15 minute order).

On March 3, 2015, plaintiff filed a motion for evidentiary/issue sanctions. Here she argued that Christian willfully failed to comply with the court's 12/16/14 order regarding RFAs 1, 6, 8, 9, 11-13 and 15. As noted above, however, the court's 12/16/14 order had not mentioned RFA 15 because it was not part of the motion. Nevertheless, on 4/2/15, the court overruled all objections to RFA 15 aside from the 5th Amendment privilege and stayed any further response in light of the criminal proceedings.

The stay was lifted in June, 2015, and Christian served supplemental responses on 8/7/15. He provided a further response to RFAs 1, 2, 16-18; he did not provide a further response to RFA 15. Had the court been made aware of all the RFAs to which Christian had asserted his 5th Amendment privilege, it would have sustained the objection and included them in the stay, making a supplemental response due after the criminal case concluded.

RFA 1: Asks Christian to admit that his negligence was a substantial factor that caused plaintiff's injuries. Christian admitted plaintiff may have sustained a "possible mild cervical sprain," but denied that any alleged negligence on his part was a substantial factor in causing the remainder of the injuries alleged. With regard to the "possible mild cervical sprain," Christian stated he lacked sufficient information to admit or deny.

Plaintiff complains that Christian's use of the words "may" and "possible" are evasive and do not constitute an admission. Christian argues that he cannot admit or deny that plaintiff suffered a cervical strain as a result of Christian's negligence because he and his attorneys are not "medical or biomechanical experts." He also complains that plaintiff refused to permit his IME doctor to examine her neck.

An RFA may request "that any other party to the action admit the genuineness of specified documents, or the truth of specified matters of fact, opinion relating to fact, or application of law to fact." CCP § 2033.010.

"A request for admissions is not a discovery device." Miller v. Marina Mercy Hospital (1984) 157 Cal.App.3d 765, 769. "Most of the other discovery procedures are aimed primarily at assisting counsel to prepare for trial. Requests for admissions, on the other hand, are primarily aimed at setting at rest a triable issue so that it will not have to be tried. Thus, such requests, in a most definite manner, are aimed at expediting the trial. For this reason, the fact that the request is for the admission of a controversial matter, or one involving complex facts, or calls for an opinion, is of no moment. If the litigant is able to make the admission, the time for making it is during discovery procedures, and not at the trial." Cembrook v. Superior Court In and For City and County of San Francisco (1961) 56 Cal.2d 423, 429. Other discovery devices "principally seek to *obtain* proof for use at trial. In marked contrast, admission requests seek to *eliminate* the need for proof." St. Mary v. Superior Court (2014) 223 Cal.App.4th 762, 775.

Christian's arguments are not well-taken. He argues that it is plaintiff's burden to prove her case but, as noted above, RFAs are not requests for proof. The question is not whether Christian has any proof one way or the other; the question is whether plaintiff has to prove this element at all and, if so, on what basis. Christian had his choice of three possible responses: admit, deny, or state he lacked sufficient information or knowledge as to the truth. If giving the last response, he was required to state that a reasonable inquiry had been made and that the information known or readily obtainable is insufficient to enable him to admit. CCP § 2033.230.

If a party fails to admit the genuineness of any document or the truth of any matter when requested to do so under this chapter, and if the party requesting that admission thereafter proves the genuineness of that document or the truth of that matter, the party requesting the admission may move the court for an order requiring the party to whom the request was directed to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. CCP §

2033.420.

Christian's argument that he and his attorneys are not experts is not sufficient. "[S]ince requests for admissions are not limited to matters within personal knowledge of the responding party, that party has a duty to make a reasonable investigation of the facts before answering items which do not fall within his personal knowledge," including asking an expert. Bloxham v. Saldinger (2014) 228 Cal.App.4th 729, 751-52.

Christian's statement that plaintiff "may" have sustained a "possible" cervical sprain is not an admission; regardless, that was not what he was asked. The RFA asks Christian to admit his negligence caused plaintiff's injuries, not whether plaintiff was injured. To the extent Christian is asserting he lacks sufficient information to admit that his negligence was a substantial factor in causing plaintiff's "possible" cervical sprain, plaintiff complains that Christian has investigated the facts of the accident, reviewed her medical records and had her examined by an orthopedic surgeon so he should be able to admit or deny.

"We do not see, however, how any court can force a litigant to admit any particular fact if he is willing to risk a perjury prosecution or financial sanctions." Holguin v. Superior Court (1972) 22 Cal.App.3d 812, 820. Christian is bound by his failure to admit and he subjects himself to a cost award after trial pursuant to CCP § 2033.420. As it stands now, RFA 1 is not admitted based on Christian's representation that he made a reasonable inquiry. The court overrules defendant's objections to RFA but denies the motion to compel.

RFA 15: Asked Christian to admit he was negligent at or near the time of the accident. The court previously sustained Christian's objection based on the 5th Amendment but that objection is no longer viable. But no sanctions should be imposed as a result of his failure to respond. Christian is ordered to provide further responses to RFA 15.

RFA 16: Asked Christian to admit that his negligence at or near the time of the incident caused plaintiff's injuries. After asserting objections, Christian provided the same response as that given to RFA 1. Overrule defendant's objections to RFA but deny the motion to compel.

RFA 17: This asked Christian to admit that plaintiff was injured as a result of the incident. Same response as RFAs 1 and 16. Overrule defendant's objections to RFA but deny the motion to compel.

RFA 18: Asked Christian to admit that plaintiff suffered damages as a result of the incident. Christian responded with improper objections. Christian stated that he admitted to being aware of $3,302 in medical billing but denied that any damages for treatment for injuries other than a "possible cervical sprain" were related to the incident. And, as to these, he claimed he lacked sufficient information or knowledge to admit or deny after making reasonable inquiry. As noted above, this constitutes a failure to admit and the court cannot force Christian to admit. Plaintiff's remedy is not to compel an admission but rather to seek costs after trial if appropriate. Overrule defendant's objections to RFA but deny the motion to compel.